U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

[redacted]

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DATE: APR 0 3 2012 OFFICE: NEBRASKA SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as the president of a new "company specializing in sales, servicing and export of consumer electronics." At the time he filed the petition, the petitioner was a business development specialist at Equus Computer Systems, City of Industry, California. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief and copies of materials already in the record.

In this decision, the term "prior counsel" shall refer to [redacted] who represented the petitioner at the time the petitioner filed the petition. On appeal, the petitioner refers to his "previous counsel, attorney [redacted] and there is no indication that any other attorney participated in the filing of the appeal.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on November 2, 2009. On that form, the petitioner stated his intention to serve as "President" of a [redacted] The record does not indicate that this firm existed at the time of filing. Rather, the record reflects the petitioner's intention to create a new, as yet unnamed company.

In an accompanying statement, prior counsel stated that the petitioner "is regarded as a seminal figure in the economic development of [the] electronics industry in the United States during the last six years." Detailing the petitioner's employment history since 2003, prior counsel stated that the petitioner "was responsible for generating $16 million [in] revenue to three different companies, which was directly or indirectly connected to the generation of hundreds of employment opportunities in the U.S. economy." Prior counsel stated that, given "the current lengthy process of obtaining a labor certification," an exemption from that process would be in the national interest. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *NYSDOT*, 22 I&N Dec. 223.

The AAO notes that, as prior counsel wrote the above words in October 2009, an application for labor certification was already pending on the petitioner's behalf. New Quality Auto Radiator Corporation, City of Industry, California, applied for a labor certification on the petitioner's behalf on June 22, 2009. The company intended to employ the petitioner as an accounting manager.

Apart from documentation of the petitioner's academic degrees, the bulk of the initial submission consisted of witness letters. Two of the five letters are one-page employer recommendation letters, written shortly after the petitioner left the respective employers. In a letter dated March 18, 2005, [redacted] stated:

> [The petitioner] served as our Business Analyst during the period from February 03, 2003 through February 28, 2005. [The petitioner] was an outstanding professional with extraordinary expertise [in] business analysis and development of various computer systems and electronics products in the U.S. and around the world. During his tenure with us, [the petitioner] was able to assist our company to triple our sales volume and establish an excellent working relationship with our main vendor.

In a March 4, 2008 letter, [redacted] City of Industry, stated:

> [The petitioner] worked for our company as Business and Budget Analyst from 03/01/05 to 02/29/08. . . .
>
> [The petitioner] has been able to analyze business trends and negotiate contracts with various manufacturers. He has been the key personnel in our company responsible for doubling our sales revenue within the last three years.

The remaining three letters were newly written to support the petition. [redacted] general manager of Equus Computer Systems, stated:

> [The petitioner] has been serving as our Business Development Specialist since March of 2008 and has been responsible for conducting market feasibility studies on target markets, including overseas markets. [The petitioner] works with cross-functional teams, including Product Design, Manufacturing, and our Marketing and Finance departments to review marketing strategies, to conduct cost-benefit analysis and product mix evaluations for target markets. Since joining our company, [the petitioner] has been able to guide our management and design teams to redesign some of our built-to-order desktops, notebooks and servers in order to fend off foreign competitions [*sic*]. As a result, our sales for 2008 increased by over 10 percent and [the petitioner] has been instrumental in bringing about the increase in our revenue.

The two remaining witnesses are the petitioner's acquaintances rather than employers. [redacted] assistant professor of management information science at the University of Wisconsin at Parkside, stated:

> [The petitioner] has proven to be a veteran in playing various leadership roles in different U.S. companies in promoting U.S. electronics products to the overseas market. . . .
>
> Of particular interest to me . . . is [the petitioner's] ability to apply his academic training in *Business Modeling and Global Communication and Management* . . . and apply them to the global business development in the electronics industry. . . .
>
> Granting [the petitioner] a U.S. permanent resident status is likely to generate hundreds of employment opportunities here in the U.S. in the near future due to his ability to increase our export and to reduce our nation's current account deficit.

[redacted], an optics engineer based in Palmdale, California, stated:

> I learned that [the petitioner] is an accomplished professional who has been assisting various companies in promoting their businesses overseas, and even to redesign their electronics and computer systems based on changes in customers' preferences.
>
> [The petitioner's] extraordinary career background in the electronics industry, coupled with his strong academic training in business management, prompted me to consider having a joint venture business with him in the near future, focusing on exporting our U.S.-made, cutting-edge, electronics products to Asia, reversing the current trend of dominance in the global electronics market.

The petitioner submitted no documentary evidence to show the extent of his impact and influence on the electronics industry, or to allow a meaningful comparison between the petitioner's work and that of other qualified professionals in the same field.

On November 25, 2009, the director issued a request for evidence. The director acknowledged the intrinsic merit of the petitioner's occupation, and instructed the petitioner to establish its national scope and the petitioner's "past record of specific prior achievement, which justifies projections of future benefit to the national interest." In response, prior counsel cited various statistics regarding the national reach of the consumer electronics industry. With respect to the petitioner's own record of accomplishment, prior counsel repeated sections of the earlier introductory statement but provided no new information. The petitioner also submitted copies of previously submitted letters.

The director denied the petition, stating: "It appears the petitioner was recruited to expand the company's market share among other duties, but time will tell if the petitioner's services are truly national in scope. At this time, there is no verifiable evidence that this is the case."

The director acknowledged the petitioner's academic and professional background, and quoted from witness letters in the record, but found that the petitioner did not submit "enough evidence . . . to distinguish the alien from an average U.S. worker who contributes to the company by performing his/her functions."

On appeal, the petitioner observes that the "national scope" prong of the national interest test from *NYSDOT* applies to the occupation, rather than to the individual alien. The AAO agrees with the petitioner that a leadership position in a consumer electronics company can have national scope. The AAO will therefore withdraw the director's finding in this regard.

There remains the issue of the petitioner's impact on his field. The petitioner notes: "As of 2008, California's gross state product (GSP) is about $1.85 trillion, which is 13% of the United States gross domestic product (GDP)." Prior counsel had previously indicated that the petitioner "was responsible for generating $16 million [in] revenue to three different companies" in California. According to the petitioner's figures, $16 million is less than one $100{,}000^{th}$ of California's GSP. In this context, it is clear that simply quoting figures cannot suffice to show that the petitioner has had a particularly significant impact in his field.

The petitioner correctly asserts that one might qualify for the waiver through positive economic impact, but it does not follow that every contribution, regardless of size, warrants the waiver. The plain wording of section 203(b)(2) of the Act indicates that aliens who "will substantially benefit prospectively the national economy" are, generally, subject to the job offer requirement. This, on its face, is enough to rebut the claim that economic benefit automatically qualifies the petitioner for the national interest waiver.

The petitioner states: "I do not believe that ordinary business development specialists, with similar academic background[s], could double or triple a company's sales within a couple of years." Going

on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The petitioner offers no evidence on appeal to show that the results he has achieved are out of the ordinary in his field. He simply offers his own opinion about whether others could accomplish what he has done.

Furthermore, even accepting the claim that the petitioner has doubled or tripled the sales for his past employers, the record fails to establish the standing of those companies before and after the petitioner's involvement. A small company having a negligible impact in its field may remain insignificant even after sales have tripled. Prior counsel had previously made general claims about employment creation, but the record contains no evidence or even precise figures to show the extent to which the petitioner's work has resulted in jobs that otherwise would not exist. The petitioner's submissions have been so vague and lacking in detail that the AAO cannot determine the extent, if any, to which the petitioner has benefited the United States economy.

When considering the prospective (as opposed to past) benefit arising from the petitioner's work, another significant factor arises. Nothing in the record indicates that the petitioner has any prior experience as a top business executive. His prior job titles have included "business development specialist" and "business analyst." Thus, the petitioner has not established any track record as the president of a consumer electronics company, let alone a record that sets him apart from others who are already working in that capacity. The assertion that his success as a development specialist portends future success as a company president amounts to little more than speculation.

The petitioner repeats the assertion that to hold him to the job offer requirement would be detrimental to the economy, particularly given "the current lengthy process of obtaining a labor certification." By the time the petitioner made this claim on appeal, on May 29, 2010, the Department of Labor had already approved the labor certification filed by New Quality Auto Radiator Corporation. On May 14, 2010, again before the date on the brief, that employer filed a Form I-140 petition seeking the same classification that the petitioner seeks for himself in the present proceeding.

The director approved the employer's petition on October 14, 2010. Thus, the petitioner is now the beneficiary of an approved petition in the same classification he sought for himself. In effect, the petitioner seeks an exemption from a requirement he has already met. The AAO also notes that the national interest waiver applies only at the petition stage; it cannot expedite the processing, or affect the outcome, of a Form I-485 adjustment application. The approved petition has a priority date more than four months earlier than the filing date of the present petition, which means that, even if the AAO had approved the petition on appeal, it would have had no effect on the priority date available to the petitioner.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a

job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.